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BEFORE THE ARIZONA CORPORATION COMMISSION

2013 MAY 21 P 3:29

COMMISSIONERS

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

ARIZONA CORP COMMISSION  
DOCKET CONTROL

In the matter of:

DOCKET NO. S-20859A-12-0413

PATRICK LEONARD SHUDAK, a single  
man,

**SECURITY DIVISION'S OPPOSITION TO  
RESPONDENT SHUDAK'S REQUEST TO  
CONTINUE HEARING**

PROMISE LAND PROPERTIES, LLC, an  
Arizona limited liability company,

Arizona Corporation Commission

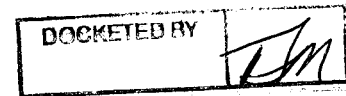
and

**DOCKETED**

PARKER SKYLAR & ASSOCIATES,  
LLC, an Arizona limited liability company,

MAY 21 2013

Respondents.



The Securities Division of the Arizona Corporation Commission ("Division") hereby opposes respondent Shudak's Notice of [...] Request to Continue Hearing ("Request") filed on May 10, 2013. None of the reasons Shudak has provided in the Request constitute good cause to reschedule the hearing dates that have been set for several months.

The other party remaining in this proceeding, Promise Land, is no longer represented. The Division served Promise Land with a copy of the Notice of Opportunity in this proceeding (the "Notice") on May 9, 2013. Unless and until Promise Land takes some action in this proceeding, it is premature and unnecessary to consider continuing the hearing on behalf of Promise Land.

**A. Naming the issuer entities as respondents and a former officer-manager as a control person is not unusual and does not create novel issues to sort out.**

In his Request, Shudak asserts that the hearing should be continued because additional knowledge regarding Shudak's April 1, 2010 resignation as manager and transfer of ownership of Promise Land, together with Shudak's December 2009 resignation as manager of Parker Skylar,

1 “casts this proceeding in a most unusual light.” According to Shudak, who claims that his memory  
2 is to blame for his failure to disclose the substance and existence of the April 1, 2010 document,  
3 this situation will require additional time to “sort out precisely what issues and parties are still part  
4 of this case[.]”

5 These resignations do not, however, change the issues and parties in this case, which remain  
6 fairly straightforward. The Division alleges that from at least January 2008 through July 2009,  
7 Promise Land and Parker Skylar violated A.R.S. § 44-1841 and A.R.S. § 44-1842 by selling  
8 securities in the form of notes and investment contracts. Parker Skylar violated A.R.S. § 44-1991.  
9 Respondent Shudak managed both entities and was the controlling person of Parker Skylar during  
10 the relevant time frame. As a controlling person Shudak is jointly and severally liable with Parker  
11 Skylar under A.R.S. § 44-1999. Both of Shudak’s resignations, even if valid, are dated well after  
12 the conduct that is the basis of these allegations. The resignations do not undo the conduct at issue  
13 and they have no effect on Shudak’s potential liability as a controlling person of Parker Skylar.

14 Shudak finds it significant that investors owned and continue to own 100% (or more: 133%  
15 in the case of Parker Skylar) of the equity in the respondent entities. Equity ownership by investors  
16 is, however, quite common in Commission proceedings. The Commission frequently orders such  
17 an issuer to pay restitution to these equity owners, even where 100% of the equity is held by  
18 investors. Respondent entities’ change of ownership does not change the issuer entity’s liability  
19 nor does it create personal liability for the limited liability members where no there is no other  
20 basis for such liability. Investor ownership of equity certainly does not absolve a controlling  
21 person of his/her liability. If that was true, any violator of the Securities Act could easily avoid  
22 liability by simply resigning from management and signing a paper purporting to transfer that  
23 person’s remaining equity to investors.

24 The Request’s focus on equity interests also ignores the fact that Promise Land and Parker  
25 Skylar issued notes to investors. These notes, bearing interest at 14%, were issued by the entities  
26 and signed by Shudak. Changes in management and equity ownership do not terminate the

1 obligations and rights created by these notes; and they certainly do not change the circumstances  
2 surrounding the issuance of the notes. The notes remain unregistered securities and an obligation  
3 of the respondent entities and Shudak as a controlling person of Parker Skylar.

4 The issuer's liability is also not affected by investors' subsequent formation of an entity that  
5 attempts to carry on some of the work of the issuing entity. In this case, after Shudak's resignation,  
6 some Parker Skylar investors formed their own separate entity, 1900 Investors, LLC, and continued  
7 to contribute capital to a residential development through this entity. Shudak presents no authority,  
8 and the Division is aware of none, where a change in ownership and investors forming their own  
9 entity absolves an issuer of its obligations under the Securities Act. As such, Shudak's resignation  
10 as manager of Parker Skylar and subsequent actions of the Parker Skylar investors does not create  
11 new, novel issues that need to be sorted out in order to conduct the hearing as scheduled.

12 **B. Shudak's failure to inform his counsel, the Division and this tribunal of his own**  
13 **actions is not a valid basis to continue the hearing.**

14 The evidence suggests that Shudak transferred his interest in Promise Land. He failed to  
15 inform his counsel, the Division and this tribunal of this fact. He should not be rewarded for this  
16 failure. The Division, in compliance with the rules, statutes and law governing administrative  
17 actions before the Commission, timely provided exhibits and witness lists on the date ordered in a  
18 procedural order. This procedure was reiterated in the Commission's denial of Shudak's  
19 "Discovery Request." In spite of the well-established law regarding administrative procedure  
20 before the Commission, and the Commission's denial of the Discovery Request, Shudak complains  
21 that the Division "did not alert" Shudak of issues related to the April 1, 2010 document. As a  
22 practical matter, until the Division receives documents from Shudak, the Division does not know  
23 what documents Shudak has, much less how he may be using or interpreting those documents.  
24 Shudak is responsible for, among other things, remembering his actions, gathering documents  
25 relevant to his defense (including, naturally, documents that he has signed), and determining his  
26 defense strategy.

1       The Division is responsible for proving its own case and providing evidence in support of  
2 that case. It is not responsible to make sure Shudak remembers and possesses everything that could  
3 potentially help him evaluate how he will proceed in the case. Indeed, the Division is under strict  
4 confidentiality laws and is subject to the relevant administrative and Commission rules that limit  
5 the Division's ability to disclose documents it receives. Shudak's attempt to receive more than he  
6 is entitled to failed when the Commission rejected his Discovery Request. The Division has met its  
7 obligations under Commission rules and relevant law. It is not responsible for building Shudak's  
8 case for him. And Shudak's failure to disclose his actions to his counsel, the Division and this  
9 tribunal, followed by Shudak's misplaced reliance on the Division to alert him of his actions, is not  
10 grounds to continue the hearing.

11       **C. The Request is untimely and causes inconvenience to counsel and witnesses.**

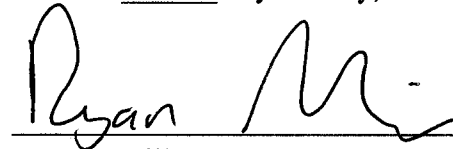
12       The currently-scheduled hearing dates were chosen at the status conference on January 10,  
13 2013. Shudak waited to bring his Request mere weeks before the hearing is scheduled to begin,  
14 and nine days after the Division and Respondents exchanged their lists of witnesses and exhibits.  
15 The Division, through undersigned counsel, has expended significant time on this matter to prepare  
16 for the exchange of witnesses and exhibits, and to get ready for the June 17<sup>th</sup> hearing. Multiple  
17 witnesses, including investors, have been contacted to appear at the June hearing. Several of these  
18 investors have adjusted their schedules to be present as witnesses for the June hearing.

19                               **CONCLUSION**

20       Respondent Shudak has provided no basis to continue the hearing currently scheduled to  
21 begin on June 17, 2013. Shudak's filing is inappropriate and unsubstantiated. The allegations  
22 against respondents remain the same as they have been since the Division filed its Notice in  
23 September 2012. Shudak's failure to inform others of his own actions and his misplaced reliance  
24 on the Division to help him determine his position and strategy do not provide good cause to  
25 continue the hearing at the expense of resources expended by the Division to prepare for the  
26 hearing as scheduled.

1  
2 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of May, 2013.

3  
4 By:



5 Ryan J. Millecam

6 Attorney for the Securities Division of the Arizona  
7 Corporation Commission  
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1 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing  
2 filed this 21 day of May 2013, with

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered this  
8 21 day of May, 2013, to:

9 ALJ Marc Stern  
10 Arizona Corporation Commission/Hearing Division  
11 1200 West Washington  
12 Phoenix, AZ 85007

13 COPY of the foregoing mailed  
14 this 21 day of May, 2013, to:

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